Supreme Court, U.S.
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No. ——

IN THE
Supreme Court of the United States
OCTOBER TERM, 1998

COMBINED INSURANCE COMPANY OF AMERICA,
Petitioner,
v.
ELIZABETH ALDRIDGE, DORIS WILLIAMS, LAVONDA BLACKWELL and GARY BLACKWELL,
Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Eleventh Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Do federal courts have the authority to protect constitutional rights. More specifically, do the All Writs Act, 28 U.S.C. § 1651(a) and the Anti-Injunction Act, 28 U.S.C. § 2283 empower a district court to enjoin a party joined under Rule 21 of the Federal Rules of Civil Procedure from seeking punitive damages in a state court action in contravention of a finding that the defendant has been sufficiently punished for the same or similar conduct alleged by the plaintiff and that the payment of additional punitive damages by the defendant would violate the defendant's right to due process where a plaintiff has no right to recover punitive damages under the Constitution of the United States or the Constitution and laws of the State of Alabama.

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PETITION FOR WRIT OF CERTIORARI

Combined Insurance Company of America[1] respectfully petitions for a writ of certiorari to review the judgments of the United States Court of Appeals for the Eleventh Circuit in these cases.

OPINIONS BELOW

The Opinion of the court of appeals regarding the appeals of Elizabeth Aldridge and Doris Williams (App., *infra,* 2a) is reported at 148 F.3d 1266. The court of appeals denial of Petitioner's Petition for Rehearing En Banc (App., *infra,* 15a) is unreported. The Opinion of

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[1] Combined Insurance Company of America is a subsidiary of AON Corporation.

the court of appeals regarding the appeal of Lavonda Blackwell and Gary Blackwell (App., *infra*, 17a) is unreported. The orders of the district court (App., *infra*, 18a; 25a; 32a; 40a; 42a; 44a) are unreported.

JURISDICTION

The court of appeals entered its judgment in the appeals of Elizabeth Aldridge and Doris Williams on August 4, 1998 (App., *infra*, 2a). The court of appeals denied Petitioner's Petition for Rehearing En Banc on December 2, 1998. (App., *infra*, 15a). The court of appeals entered its judgment in the appeal of Lavonda Blackwell and Gary Blackwell on February 8, 1999. (App., *infra*, 17a). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS INVOLVED

The All Writs Act, 28 U.S.C. § 1651(a) provides: "The Supreme Court and all courts established by Act of Congress may issue all writs necessary where appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." (App., *infra*, 50a). The Anti-Injunction Act, 28 U.S.C. § 2283 provides: "A court of the United States may not grant an injunction to proceedings of a state court except as expressly authorized by Act of Congress or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." (App., *infra*, 51a).

STATEMENT OF THE CASE

A. The Proceedings Below

Steans v. Combined Insurance Company of America was filed in the Circuit Court of Mobile County, Alabama in September 1995. The case was timely removed to the United States District Court for the Southern District of Alabama.

The jurisdiction of the district court was invoked under 28 U.S.C. § 1332 because of diversity of citizenship, Steans being a citizen of the State of Alabama and the defendant being a citizen of Illinois. Steans alleged a "pattern and practice" of intentional misrepresentation in the sale of Combined Insurance Company of America's ("Combined") insurance policies. Steans' complaint sought compensatory and punitive damages. On August 19, 1996, the district court entered an order in the *Steans* action ordering that no additional punitive damages could be assessed in Alabama against Combined for any allegations of the same or similar conduct occurring on or before the date of the order. (App., *infra*, 44a). The district court made specific findings that a majority of the amounts paid to plaintiffs/claimants constituted punitive damages for the alleged pattern and/or practice of conduct asserted in the *Steans* action. The district court, moreover, found that the amount paid was sufficient to punish Combined and to deter Combined and others from the same pattern and/or practice of conduct in the future. The district court further found that the imposition of additional punitive damages against Combined for the same or similar conduct would be duplicative and would constitute excessive punitive awards in violation of this Court's ruling in *BMW of North America v. Gore*, 517 U.S. 559 (1996). (App., *infra*, 48a-49a).

Combined served notice of entry of the August 19 Order and a copy of the order on the Respondents, all of whom are seeking to punish Combined for the same alleged pattern and/or practice of conduct. (R-1-36-Ex. C). The Respondents seek compensatory and punitive damages in their state court actions. Although the Respondents were represented by counsel at the time notice of the August 19 Order was served upon them, they made no response to the notice, either to the district court or to

Combined. Combined thereafter requested by letter to the Respondents' counsel that any and all claims for punitive damages be dismissed from the Respondents' state court actions in order to avoid violating the district court's judgment (R-1-36-Ex.D). The Respondents made no response to this demand.

As the Respondents made no response to Combined's efforts to inform them of the district court's judgment, Combined filed separate motions with the district court in the *Steans* action, requesting that the court add the Respondents to the *Steans* action and enjoin the Respondents from seeking punitive damages in their state court actions. Pursuant to Rule 21 of the Federal Rules of Civil Procedure, the district court granted Combined's motions to join the Respondents to the *Steans* action. (App., *infra,* 18a; 40a; 42a). The district court further ordered the parties to show cause as to why the Respondents should not be enjoined from pursuing punitive damages to their state court actions against Combined. The parties responded to the court's order and presented evidence as to the applicability of the district court's August 19 Order to the Respondents. (R-II-19-48; R-1-43; R-1-90). After hearing from the parties both on brief and orally, the district court, under the authority of 28 U.S.C. § 2283, issued orders enjoining the Respondents from seeking punitive damages in their state court actions, finding that an injunction was necessary in order to protect and effectuate its judgment that "no additional punitive damages may be assessed in Alabama against Combined arising out of certain acts of alleged misconduct." (App., *infra,* 18a; 25a; 32a). In so ordering, the district court determined that the Respondents' state court actions involve the same conduct for which the district court had determined that Combined had been sufficiently punished and allowing the Respondents to continue to pursue puni-

tive damages in their state court actions would violate Combined's constitutional rights.

The Respondents filed notices of appeal with the United States Court of Appeals for the Eleventh Circuit. The appeals of Elizabeth Aldridge and Doris Williams were consolidated for appeal. On August 4, 1998, the court of appeals entered an opinion reversing the district court's orders joining Elizabeth Aldridge and Doris Williams to the *Steans* action and enjoining them from pursuing their claims for punitive damages. Combined filed a Petition for Rehearing En Banc, which was denied on December 2, 1998. The court of appeals granted Lavonda Blackwell and Gary Blackwell's motion for summary reversal on February 8, 1999.

B. The All Writs Act and the Anti-Injunction Act

This case involves a district court's right to protect constitutional rights. Specifically, the case involves 28 U.S.C. § 1651(a), the All Writs Act, and 28 U.S.C. § 2283, the Anti-Injunction Act, and the power granted to a district court by these acts to enjoin a party joined to an action under Rule 21 of the Federal Rules of Civil Procedure from acting in contravention of the district court's judgment.

The district court's orders adding the Respondents to the *Steans* action and enjoining them from pursuing their claims for punitive damages were a proper exercise of its power under the All Writs Act and the Anti-Injunction Act. The All Writs Act states that "[t]he Supreme Court and all courts established by Act of Congress may issue all writs necessary where appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law." The Anti-Injunction Act provides: "A court of the United States may not grant an injunction to proceedings of a state court except as expressly authorized by Act of Congress or where necessary in aid of its juris-

diction, or to protect and effectuate its judgment." This Court has stated with regard to the All Writs Act that:

> The power conferred by the Act extends, under appropriate circumstances, to persons who, though not parties to the original action or engaged in wrongdoing, are in a position to frustrate the implemention of a court order or the proper administration of justice [citations omitted] and encompasses even those who have not taken any affirmative action to hinder justice. (citations omitted)

United States v. New York Tel. Co., 434 U.S. 159, 174 (1977). Following *New York Tel. Co.*, the district court clearly has the power under the All Writs Act and the Anti-Injunction Act to enjoin the Respondents from seeking punitive damages in frustration of its judgment finding that any additional punitive damages would be excessive and violative of Combined's constitutional rights.

New York Tel. Co. clearly establishes a court's right to enjoin parties "not parties to the original action". *United States v. New York Tel. Co.*, 434 U.S. at 174. Additionally, this Court has stated that it is joinder and an opportunity to be heard, not knowledge of a judgment that governs whether a party is bound by a court's judgment. *Martin v. Wilkes*, 490 U.S. 755, 765 (1989). The district court properly joined the Respondents to the *Steans* action under Rule 21 of the Federal Rules of Civil Procedure and allowed the Respondents to argue the applicability of the August 19 Order prior to entering any order enjoining them from acting in violation of the Order. (R-II-19-48; R-1-43; R-1-90).

The district court clearly followed the directives of this Court. The All Writs Act clearly authorizes a district court to issue an injunction that restrains parties who have not yet appeared. *New York Tel. Co.*, 434 U.S. at

174. Following the procedure set forth in *Martin* and *New York Tel. Co.*, the district court properly joined the Respondents to the *Steans* action and thereafter enjoined them from pursuing their punitive damages claims. The district court, therefore, properly joined the Respondents to the *Steans* action under Rule 21 of the Federal Rules of Civil Procedure and exercised its power under the All Writs Act, as well as the Anti-Injunction Act, to enjoin the Respondents from pursuing their claims for punitive damages.

C. The Respondents' Right to Seek Punitive Damages

In appealing the district court's orders enjoining them from pursuing punitive damages in their state court proceedings, the Respondents claim that they have a right to punitive damages. The law is clear that there is no right to punitive damages in Alabama. *City Bank of Alabama v. Eskridge,* 521 So. 2d 931, 933 (Ala. 1988). As such, the Respondents have no right to pursue their claims for punitive damages, especially where the pursuit would violate the due process rights of Combined.

In its August 19, 1996 Order, the district court specifically found that the amounts paid by Combined were sufficient "to fully punish and deter" Combined and others from similar conduct, determining that any additional punitive damage awards would be excessive and cumulative and would violate Combined's constitutional right to due process. In joining the Respondents to the *Steans* action and entering the injunctions under the authority of the All Writs Act and the Anti-Injunction Act, the district court specifically found that the Respondents' claims were based upon the same conduct as that for which the district court had already determined that Combined had been fully punished. (App., *infra,* 18a; 25a, 32a). Therefore, the continued pursuit of punitive damages by the

Respondents would frustrate the district court's judgment and would violate the constitutional rights of Combined.

In enjoining the Respondents, the district court merely enjoined the Respondents from pursuing their claims for punitive damages. Under Alabama law, a plaintiff has no right to punitive damages. *City Bank of Alabama v. Eskridge,* 521 So. 2d at 933. The purpose of punitive damages is to punish and deter wrongful conduct, not to compensate the plaintiff. *Id.* Punitive damages "are awarded as a punishment to the wrongdoer and to deter him and others in the same or similar situation from such wrongdoing in the future." *Id.* The district court made a clear determination in its August 19 Order that the amounts paid by Combined were sufficient to meet society's goals of punishment and deterrence. The court further determined that any additional punitive award would be excessive under this Court's standards as set forth in *BMW v. Gore.* (App., *infra,* 48a-49a).

Simply, the Respondents seek the right to pursue punitive damages in their state court proceedings. The district court, however, clearly made its determination that Combined had been sufficiently punished for the same pattern and/or practice of conduct alleged by the Respondents only after reviewing the evidence presented by the Respondents and Combined regarding the application of the August 19 Order to the Respondents. The district court properly determined that the sums paid by Combined were sufficient and that the purpose of the punitive damage award has, therefore, been met. The Respondents have no right to seek punitive damages in their state court actions. Therefore, the orders enjoining the Respondents from seeking punitive damages are proper.

REASONS FOR GRANTING THE PETITION

The thrust of the court of appeals opinion focused on the court's perception that the Respondents were not made parties to the *Steans* action and were not given an opportunity to be heard. The problem with this determination, as noted in this petition, is that the court of appeals is incorrect. The Respondents were properly joined under Rule 21 of the Federal Rules of Civil Procedure. Further, the Respondents had multiple opportunities to protect their interests, yet chose not to do so. Moreover, the district court heard from the Respondents both orally and on brief prior to enjoining them from pursuing punitive damages in their state court proceedings.

The court of appeals erroneously determined that the district court was without the power to enjoin the Respondents from seeking punitive damages in their state court actions. Additionally, the court of appeals erroneously determined that the district court had attempted to bind the Respondents to the August 19 Order without properly joining the Respondents to the action in which the order was entered and without affording the Respondents the right to be heard. It is clear, however, that the district court was empowered by the All Writs Act, the Anti-Injunction Act and this Court's holdings in *United States v. New York Tel. Co.* and *Martin v. Wilks* to enter the orders enjoining the Respondents from pursuing their punitive damages claims, as the Respondents had been properly joined to the *Steans* action under Rule 21 of the Federal Rules of Civil Procedure and had been given the opportunity to be heard with regard to the applicability of the August 19 Order.

The court of appeals determination that the district court's orders are due to be reversed is erroneous on two grounds. First, the district court is empowered under the

All Writs Act, 28 U.S.C. § 1651(a), and the Anti-Injunction Act, 28 U.S.C. § 2283, to enjoin a party properly joined to an action under Rule 21 of the Federal Rules of Civil Procedure from acting in contravention of the court's judgment. Second, the Respondents have no right to punitive damages. *Eskridge,* 521 So. 2d at 933.

I. THE COURT OF APPEALS INTERPRETATION OF THE ALL WRITS ACT, 28 U.S.C. § 1651(a), AND THE ANTI-INJUNCTION ACT, 28 U.S.C. § 2283, CONFLICTS WITH THE LAW OF THIS COURT HOLDING THAT A FEDERAL COURT HAS THE POWER TO ISSUE ALL WRITS NECESSARY IN AID OF ITS JURISDICTION AND TO BETTER ENABLE A PARTY TO PROTECT ITS RIGHTS.

The All Writs Act clearly states that a court "may issue all writs necessary where appropriate in aid of their respective jurisdiction and agreeable to the usages and principles of law." 28 U.S.C. § 1651(a). Additionally, the Anti-Injunction Act provides that a court may not enjoin state court proceedings except where such injunction is "necessary in aid of its jurisdiction, or to protect or effectuate its judgment." 28 U.S.C. § 2283. Under this authority, the district court determined that Respondents should be enjoined from pursuing their claims for punitive damages in their state court actions, as the continued pursuit of punitive damages would frustrate the district court's determination that no additional punitive damages should be assessed since Combined had been punished to the constitutional limit for the same pattern and/or practice of conduct for which the Respondents seek punitive damages.

The court of appeals erroneously determined that the district court's orders adding the Respondents to the *Steans* action and enjoining them from seeking punitive damages were improper. The court of appeals opinion,

however, is contrary to the clear law of this Court. In *Martin v. Wilks,* this Court stated: "Joinder as a party, rather than knowledge of a lawsuit and an opportunity to intervene, is the method by which potential parties are subjected to the jurisdiction of the court and bound by a judgment or decree." *Martin v. Wilks,* 490 U.S. at 765. The district court clearly followed the procedure set out in *Martin* in enjoining the Respondents from pursuing punitive damages, as the Respondents were properly joined to the *Steans* action and were given multiple opportunities to be heard prior to being enjoined.

Unlike what the court of appeals seems to assert, *Martin* does not stand for the proposition that a party must have originally been named as a party to an action in order to be bound by a judgment. *Martin* simply stands for the proposition that, to be bound by a judgment, a party must be joined in the litigation and given his day in court to contest the application of the judgment to him. Consistent with *Martin,* the district court joined the Respondents to the *Steans* action under Rule 21 of the Federal Rules of Civil Procedure and ordered the Respondents to show cause as to why they should not be enjoined from pursuing their claims for punitive damages. The Respondents argued the merits of the August 19 Order and its application to their actions. (R-II-19-48; R-1-43; R-1-90). The district court heard from the Respondents both on brief and orally, and received evidence from the Respondents prior to issuing the injunctions. Therefore, it was only after properly joining the parties to the *Steans* action and receiving evidence as to the applicability of the August 19 Order that the district court determined the Respondents should be enjoined from pursuing punitive damages in contravention of the district court's judgment. As such, the Respondents were clearly joined to the *Steans* action and given the opportunity to be heard prior to being

enjoined from seeking punitive damages; therefore, the district court followed the procedure set forth in *Martin*.

It is clear that the August 19 Order is not binding by its own operation, and the district court recognized this and, therefore, following the procedure of *Martin*, properly joined the Respondents to the *Steans* action and allowed the Respondents to argue fully the merits of the August 19 Order. Only after hearing from the parties did the district court determine that the injunctions should issue. Additionally, the Respondents were aware of the August 19 Order well before they were added to the *Steans* action, as Combined sent notice of the Order to the Respondents. (R-1-36-EX.C). The Respondents, however, did not respond to the notice. It was only after the Respondents failed to respond to a request by Combined to dismiss their claims for punitive damages so as to avoid violating the judgment of the district court that Combined moved the district court to add the Respondents to the *Steans* action and enjoin their pursuit of punitive damages. The Respondents, therefore, had every opportunity to argue the merits of the August 19 Order and to show the district court that the order was not applicable to their suits.

The district court properly joined the Respondents to the *Steans* action prior to issuing injunctions prohibiting the Respondent from seeking punitive damages in their state court actions. Therefore, the district court clearly followed *Martin*, which merely holds that a party must be joined to the action in order to be bound by a judgment. *Martin*, 490 U.S. at 761. The district court did not apply the August 19 Order to non-parties without joinder or an opportunity to be heard. The district court did not issue the injunctions until after the Respondents had an opportunity to demonstrate why they should not be bound by the August 19 Order. The entry of the August 19 Order and

the subsequent orders enjoining the Respondents is consistent with *Martin* and the case law under the All Writs Act and the Anti-Injunction Act.

The All Writs Act authorizes a district court to issue an injunction that restrains nonparties and parties who have not yet appeared. *New York Tel. Co.*, 434 U.S. at 174. The court of appeals' opinion reversing the district court's orders enjoining the Respondents is contrary to its own holdings in *Welch v. Folsom*, 6 F.3d 1465 (11th Cir. 1993), *cert. denied sub nom. Sinkfield v. Wesch*, 510 U.S. 1046 (1994), and *Kelly v. Merrell Lynch, Pierce Fenner & Smith, Inc.*, 985 F.2d 1067 (11th Cir. 1993), *cert. denied*, 510 U.S. 1011 (1993). Both *Wesch* and *Kelly* specifically hold that the All Writs Act and the Anti-Injunction Act empower federal courts to issue an injunction where it is necessary to protect or effectuate its judgment. *Wesch v. Folsom*, 6 F.3d at 1470; *Kelly v. Merrill Lynch, Pierce, Fenner & Smith, Inc.*, 985 F.2d at 1069. Additionally, this Court has found regarding the All Writs Act that the power conferred upon the courts by the Act may extend to parties and non-parties who "are in a position to frustrate the implementation of a court order or the proper administration of justice [citations omitted] . . ." *United States v. New York Tel. Co.*, 434 U.S. 159, 174 (1977).

This Court has consistently construed the All Writs Act to authorize a federal court to issue injunctions where necessary "to effectuate and prevent the frustration of an order it has previously issued in its exercise of jurisdiction otherwise obtained." *Pennsylvania Bureau of Correction v. U. S. Marshals Serv.*, 474 U.S. 34, 40 (1985). In addition, the Court has held that the All Writs Act authorizes "orders designed to better enable a party to effectuate his rights . . ." *New York Tel. Co.*, 434 U.S. at 176, n. 23. As such, the district court had the power

to protect its own judgment, as well as to protect the constitutional rights of Combined to be be free from excessive punitive damages.

The circumstances before the district court squarely fit within this Court's determination that the All Writs Act "empowers federal courts to fashion extraordinary remedies when the need arises . . ." *Pennsylvania Bureau of Correction v. U. S. Marshals Serv.*, 474 U.S. at 43. Combined's constitutional right under the Fourteenth Amendment to be free from the imposition of excessive punitive damages was before the district court and the constitutional right was in jeopardy. The district court was empowered by the All Writs Act and the Anti-Injunction Act to protect Combined's constitutional right to be free from excessive punitive damages by the entry of the injunctions prohibiting the Respondents from pursuing punitive damages. The district court's order specifically defined the conduct for which the constitutional limit had been reached. (App., *infra,* 45a-46a). Therefore, the district court left open punitive exposure for other wrongful conduct for which Combined had not been punished or had not been sufficiently punished. Prior to entering the injunctions, the district court received evidence from the Respondents and heard from the Respondents both orally and on brief. Only after the district court reviewed all of the evidence before it did the court determine that the conduct alleged by the Respondents was the same pattern and/or practice of conduct for which Combined has been punished to the constitutional limit.

In reviewing this court's opinion in *New York Tel. Co.*, it is clear that the Court intended that a district court be given the power to enjoin parties and non-parties from frustrating the judgment of the court. *New York Tel. Co.* and *Martin* show that parties subsequently joined to an action may be enjoined under the All Writs Act and that

the proper procedure is to join the party to the action where the judgment has been rendered and give the party the opportunity to contest the application of the judgment to him. In short, *New York Tel. Co.* provides the substantive proposition that non-parties can be enjoined under the All Writs Act and *Martin* shows the appropriate procedure for doing so.

Clearly, the district court followed both the substantive law of *New York Tel. Co.* and the procedural law set forth in *Martin*. The district court's August 19 Order does not purport to bind the Respondents by its own operation, but rather, the district court, consistent with *Martin*, properly joined the Respondents to the *Steans* action under Rule 21 of the Federal Rules of Civil Procedure. The district court allowed the Respondents the opportunity to contest the August 19 Order and its application to them prior to enjoining them from pursuing their punitive damage claims. Therefore, the district court's orders enjoining the Respondents from pursuing their claims for punitive damages were a proper exercise of its power under the All Writs Act, the Anti-Injunction Act and the case law of this Court.

II. THE COURT OF APPEALS OPINION IS CONTRARY TO THE LAW OF THIS COURT AND THE LAW OF THE STATE OF ALABAMA, AS IT PRESUMES THAT THE RESPONDENTS ARE ENTITLED TO PUNITIVE DAMAGES AS A MATTER OF RIGHT.

In addition to the fact that the district court's orders were a proper exercise of its power to protect its judgment and Combined's constitutional rights, the authority for the district court's orders is strengthened by the fact that there is no right to punitive damages under Alabama law. *Eskridge*, 521 So. 2d at 933 (Ala. 1988). The Alabama Supreme Court has clearly stated that "[p]unitive damages are not awarded because the injured party

is entitled to them as a matter of right; they are awarded as a punishment to the wrongdoer and to deter him and others in the same or similar situation from such wrongdoing in the future." *Eskridge*, 521 So. 2d at 933 (Ala. 1988), (citation omitted). *See also Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353, 1358 (11th Cir. 1996) (stating that the purpose of punitive damages is to punish and deter wrongful conduct); *see Allen v. R & H Oil & Gas Co.*, 63 F.3d 1326 (5th Cir. 1995) (the purpose of punitive damages is to punish the wrongdoer).

Because punitive damages serve to punish and deter wrongful conduct, such damages are not intended to compensate the plaintiff, *Allen v. R & H Oil & Gas Co.*, 63 F.3d at 1331. In *Allen,* the Fifth Circuit permitted the aggregation of the class members' claims to satisfy the jurisdictional amount because it determined that punitive damages represented "a united claim for a common and undivided interest." *Id.* at 1331. When the amount of punitive damages is at issue, Alabama courts look to the reprehensibility of the defendants' conduct. *American Pioneer Life, Ins. Co. v. Williamson,* 704 So. 2d 1361, 1362 (Ala. 1997). Alabama courts will review allegedly excessive judgments in part, by determining whether the punitive damages amounts "awarded exceed [t]he amount necessary to accomplish society's goals of punishment and deterrence." *Id.* (citing *Green Oil Co. v. Hornsby,* 539 So. 2d 218 (Ala. 1989)).

Several circuits have determined that there is no right to punitive damages. In the context of determining the constitutionality of wrongful death statutes that prohibit the recovery of punitive damages, the Seventh Circuit expressly rejected the contention that an Illinois statute, which did not permit punitive damages in a wrongful death case, was unconstitutional. *Huff v. White Motor Corp.*, 609 F.2d 286, 298 (7th Cir. 1979). Because the Seventh

Circuit determined that this wrongful death statute did not affect fundamental rights, it determined that the statute did not violate the equal protection clause of the United States Constitution. *Id.* at 298. The Ninth Circuit, when faced with a similar question, likewise determined that a denial of punitive damages and wrongful death actions did not violate the constitution. *In re Paris Air Crash,* 622 F.2d 1315 (9th Cir. 1980). The Ninth Circuit noted that recovery of punitive damages was not a fundamental right, it determined that the statute served a legitimate state interest to limit damages available against defendants. *Id.* at 1319-1320.

While not alone in its construction of punitive damages, Alabama has historically held that a plaintiff is not entitled to punitive damages, rather they are only awarded to deter and punish wrongful conduct. *Meighan v. Birmingham Terminal Co.,* 51 So. 2d 775, 778 (Ala. 1910) (stating that "[a] plaintiff has no right to maintain an action merely to inflict punishment. Exemplary damages are in no case a right of the plaintiff, but are assessed at the discretion of the jury for the purpose indicated . . ."). This Court has strongly indicated that plaintiffs do not have a right to pursue punitive damages. This court's holding in *BMW of North America v. Gore,* 517 U.S. 559 (1996), a case originating from Alabama, determined that a 50% remittitur was not sufficient because the defendant had been excessively punished for its wrongdoings. This Court noted that the Fourteenth Amendment prohibits states from assessing excessive damages against tortfeasors. *Id.* at 562. One of the factors to determine whether punitive damages are excessive is the ratio of compensatory to punitive damages. *Id.* at 574. In *Gore,* the punitive amounts were 500 times the compensatory damages; thus the court held that the punitive damages

could not be upheld as the goal of deterring future wrongful conduct could be achieved by other means. *Id.* at 585.

The court of appeals erred in failing to address the punitive damages issue and merely focusing on whether the Respondents had been given the opportunity to be heard. *Steans v. Combined Ins. Co. of America,* 148 F.3d 1266, 1271-72 (11th Cir. 1998) (stating that it would "not address the harder issues entailed in Combined's attempt to obtain a pre-trial limit on Aldridge's and Williams' claims for punitive damages."). What the court of appeals overlooked, however, is the fact that the district court's order did not prevent the Respondents from pursuing their compensatory damages; rather, it only affects their ability to pursue punitive damages, something Alabama has clearly stated is not a right. *See City Bank of Alabama v. Eskridge,* 521 So. 2d 931 (Ala. 1988).

The district court properly entered the August 19 Order, preventing further punitive damages against Combined, as Combined has been sufficiently punished. The district court reviewed the evidence presented by the parties to the *Steans* action and reviewed the amounts paid by Combined to Steans and over sixty (60) plaintiffs/claimants in the State of Alabama for the same pattern and/or practice of conduct. The district court then determined that any further assessment of punitive damages against Combined would violate the guidelines established by this Court on what constitutes a grossly excessive punishment:

> The Court finds that the sums paid in settlement of the cases are almost exclusively in settlement of punitive damage claims, as the compensatory damage sustained by any one Plaintiff would not likely exceed $1,000.00 and in many cases the actual compensatory loss suffered by the Plaintiffs is less than $500.00. (App., *infra,* 47a).

As the district court clearly weighed the factors necessary to determine an appropriate punitive damage award, it cannot be said that the court abused its discretion by disallowing further punitive damages for the same wrongful conduct. *Riley v. Camp*, 130 F.3d 958, 980 (11th Cir. 1997) (citing *Browning-Ferris Industries of Vermont, Inc. v. Kelco Disposal, Inc.*, 492 U.S. 257 (1989)) (citation omitted).

The district court specifically found that the assessed punitive damages were sufficient to deter future misconduct on the part of Combined and others and to punish Combined for alleged misconduct:

> The cumulative amount which Combined has paid or agreed to pay is adequate, when coupled with other payments made and expenses incurred to fully punish and deter Combined and all of its current and former agents with respect to any and all of Combined's, or its agents', Misconduct which has occurred up to and including the date of this order. (App., *infra*, 48a-49a).

The district court further determined that the ratio of punitive damages to compensatory damages was 125 to 1. App., *infra*, 48a). As this Court indicated in *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1, 23-24 (1991), a punitive damages award of four times the compensatory award is "close to the line" of what will be acceptable. As the district court found, Combined paid punitive damages of 125 times the compensatory awards; therefore, any further punishment of Combined would certainly "cross the line into the area of constitutional impropriety." *Haslip*, 499 U.S. at 23-24.

The substantive due process rights of the defendant, not the plaintiff, determine when an award of punitive damages becomes grossly excessive. While the focus is

initially on what will punish and deter wrongful conduct, the defendant, not the plaintiff, is the party afforded protection by substantive due process. *BMW of North America v. Gore*, 517 U.S. 559. An award of punitive damages, which is now possible following the court of appeals improper reversal of the district court's order, would certainly violate Combined's substantive due process rights. *Dunn v. HOVIC*, 1 F.3d 1371, 1389 (3rd Cir. 1993) (noting that "successive punitive damage award[s]" can violate due process if assessed for the same wrongful conduct). Punitive damages cannot be awarded over and over for the same wrongful conduct. *Racich v. Celotex Corp.*, 887 F.2d 393, 398 (2nd Cir. 1989).

Because a plaintiff in Alabama has no right to punitive damages and because this Court has determined that a clearly excessive amount of punitive damages can violate a defendant's substantive due process rights, the only party in Alabama with any constitutional rights with regard to punitive damages is the defendant. Accordingly, the Respondents cannot claim that the district court's orders violate their right to due process because they have no right to punitive damages. Moreover, because the district court determined that, based on Combined's alleged misconduct, the punitive damage award was sufficient to deter and punish, the court of appeals erred in reversing this determination.

CONCLUSION

For the reasons stated above, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX

APPENDIX

[Filed Aug. 4, 1998]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 97-6023

D. C. Docket No. 95-0809-BH-M

SARAH P. STEANS,
Plaintiff,

versus

COMBINED INSURANCE COMPANY OF AMERICA,
Defendant-Appellee,

ELIZABETH ALDRIDGE,
Cross-Defendant-Appellant,

DORIS WILLIAMS,
Cross-Defendant.

No. 97-6123

D. C. Docket No. 95-0809-BH-M

SARAH P. STEANS,
Plaintiff,

versus

COMBINED INSURANCE COMPANY OF AMERICA,
Defendant-Appellee,

ELIZABETH ALDRIDGE,
Cross-Defendant.

DORIS WILLIAMS,
Cross-Defendant-Appellant,

Appeals from the United States District Court
for the Southern District of Alabama

(August 4, 1998)

Before ANDERSON and MARCUS, Circuit Judges, and HANCOCK*, Senior District Judge.

ANDERSON, Circuit Judge:

In this case, the appellants Elizabeth Aldridge and Doris Williams appeal the district court's orders prohibiting future punitive damages awards in Alabama against Combined Insurance Company of America, and enjoining them from prosecuting their claims for punitive damages in state court. We conclude that the August 19, 1996, order prohibiting future punitive damages awards was not binding on Aldridge and Williams and that Aldridge and Williams did not have a full and fair opportunity to litigate the orders enjoining their state court claims for punitive damages. We vacate and remand.

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* Honorable James H. Hancock, Senior U.S. District Judge for the Northern District of Alabama, sitting by designation.

I. FACTS AND PROCEDURAL HISTORY

On May 9, 1995, appellant Doris Williams filed a complaint in the Circuit Court of Mobile County, Alabama, against appellee Combined Insurance Company of America ("Combined") alleging that Combined and its agents had engaged in insurance fraud and seeking compensatory and punitive damages.[1] Appellant Elizabeth Aldridge filed a complaint against Combined on July 6, 1995, in the Circuit Court of Marengo County, Alabama.[2] In her complaint, Aldridge sought compensatory and punitive damages for the alleged fraudulent misrepresentations of Combined and its agents.[3]

On August 24, 1995, Sara P. Steans filed a complaint in the Circuit Court of Mobile County, Alabama, alleging insurance fraud on the part of Combined and its agents

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[1] In her complaint, Williams alleged that she purchased an insurance policy based on the fraudulent misrepresentations of Combined and its agents. Williams alleged that Combined had actual or constructive knowledge of its insurance agents' misrepresentations that the policy would provide health and disability coverage in the event Williams was hospitalized or treated by a physician for *any* reason, when, in fact, the policy only provided limited coverage in the event of an *accidental* bodily injury.

[2] Aldridge and Williams were represented by the same counsel, but filed separate lawsuits.

[3] In her complaint, Aldridge, like Williams, alleged that Combined had actual or constructive knowledge of its insurance agents' misrepresentations that the policy she purchased would provide coverage in the event Aldridge was hospitalized or treated by a physician for *any* reason, when the policy only provided limited coverage in the event of an *accidental* bodily injury. Aldridge also added a second cause of action alleging that Combined negligently and wantonly trained, supervised, and retained its employees, as well as a third cause of action alleging that Combined's insurance agents knew or should have known that the policy would not provide any benefits to her because she was a Medicaid recipient and, pursuant to Alabama statutory law, all Medicaid recipients assign their benefits under any insurance policy to the Alabama Medicaid Agency.

and seeking compensatory and punitive damages.[4] Subsequently, Combined removed Steans' action to the United States District Court for the Southern District of Alabama (hereinafter referred to as "the *Steans* case"). Prior to trial, the parties in the *Steans* case reached an agreement to settle their case, and pursuant to this agreement,[5] filed a motion requesting that the district court enter an order prohibiting claims for punitive damages by any other insureds of Combined. On August 19, 1996, the district court held a hearing with counsel for Combined and counsel for Sara Steans regarding the parties' settlement agreement and the requested order prohibiting punitive damages claims by other insureds. On the same date, the district court entered the requested order ("August 19 Order") and made the following findings:

> Combined has settled litigation or threatened litigation with approximately 63 plaintiffs/claimants for a total of $8.25 million. The aggregate amount of the settlements agreed to be paid is four-and-a-half times Combined's entire statutory profits earned during the whole of the ten year period between 1985 and 1994 in the State of Alabama. . . . The ratio of punitive damages to compensatory damages paid in these settlements is more than 125 to 1. . . . The payment by Combined of the amounts it has either paid or agreed to pay is sufficient to punish Combined for the alleged Misconduct and to deter Combined and others from similar Misconduct in the future. . . . The imposition of additional punitive damages against Combined for such alleged Misconduct would constitute

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[4] Steans alleged in her complaint that Combined's insurance agents made false representations regarding the extent of coverage provided by her policy and that she was sold a policy that was void from its issuance due to defects in its delivery.

[5] This agreement also settled claims by twelve other individuals represented by Steans' counsel. Steans' counsel did not represent Elizabeth Aldridge and Doris Williams.

> duplicative, multiple, unjust and grossly excessive punitive awards.

District Court Order, at 6 (August 19, 1996).[6] Based on these findings, the district court ordered that

> no additional punitive damages may be assessed in Alabama against Combined or any of its past or present agents for any allegations of the same or similar Misconduct which occurred on or before the date of this Order. This Court will retain jurisdiction of this case for purposes of enforcing this Order and the settlement of this case. In making these findings and this Order, this Court has considered allegations of 63 Plaintiffs/claimants who reside throughout the state of Alabama, and evidence relating to Combined's operation in the entire state of Alabama.

Id. at 7.[7] The August 19 Order was entered without advance notice to either Aldridge or Williams, and neither

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[6] The district court noted that Combined had agreed to pay $775,000 to Steans and 12 other claimants represented by Steans' counsel, and that Combined had agreed to pay $7.5 million to approximately 50 other claimants in Alabama who were not represented by Steans' counsel.

[7] The district court defined the "alleged Misconduct" of Combined to include

> 1. Intentionally making misrepresentations or engaging in a pattern and practice of making misrepresentations to policyholders, including, but not limited to, misrepresenting benefits payable under various insurance policies issued by Combined, misrepresenting amounts payable under various policies, misrepresenting issues as to Medicaid or Medicare, misrepresenting the effect of the age of the policyholders on benefits available, misrepresenting the time during which benefits are payable, and misrepresenting the type of treatment, medical or otherwise, covered by the policies;
>
> 2. Fraudulently suppressing from policyholders or engaging in a pattern and practice of fraudulently suppressing from policyholders material and important information regarding policies, including, but not limited to, suppressing what benefits are or

Aldridge nor Williams was a party to the *Steans* case at the time that the order was entered.

On October 18, 1996, Combined filed a motion with the district court in which it sought to add Elizabeth Aldridge as a "cross-defendant" in the *Steans* case and to enjoin Aldridge's state court action with respect to her punitive damages claims. On October 21, 1996, the district court entered an order granting the motion to add Aldridge as a cros-defendant under Fed. R. Civ. P. 21,[8] and ordered a show cause hearing regarding Combined's motion to enjoin Aldridge from prosecuting her claims for punitive damages.[9] Subsequently, on December 2,

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are not payable under various insurance policies issued by Combined, suppressing what is or is not covered by various insurance policies, suppressing what amounts are payable and what amounts are not payable under various policies, suppressing facts material to issues as to Medicare or Medicaid, suppressing whether the age of policyholders does or does not impact available benefits, suppressing the time during which benefits are payable or not payable, suppressing the type of treatment, medical or otherwise, which is or is not covered by the policies;

3. Negligent or wanton hiring, training, or supervision of agents;

4. Converting policy holder funds; and

5. Violating Alabama State law in the sale of policies or the servicing of claims.

District Court Order, at 2-3 (August 19, 1996).

[8] Rule 21 provides in relevant part that "[p]arties may be dropped or added by order of the court on motion of any party or of its own initiative at any stage of the action and on such terms as are just." Fed. R. Civ. P. 21.

[9] In response to the order setting a date for the show cause hearing, Aldridge filed a motion to shorten time for Combined to answer Aldridge's "First Interrogatories and Request for Production." Aldridge alleged that she needed the discovery material in order to effectively participate in the show cause hearing. The district court carried Aldridge's motion to compel discovery until the show cause hearing, and apparently denied the motion by enjoining Al-

1996, the district court entered an order enjoining Aldridge from prosecuting her claims for punitive damages in state court. The district court concluded that an injunction was "necessary to protect" its August 19 order and enjoined Aldridge under the Anti-Injunction Act, 28 U.S.C. § 2283.[10] Aldridge filed a notice of appeal.

Combined also filed a motion seeking to add Doris Williams as a "cross-defendant" in the *Steans* case and seeking to enjoin Williams from pursuing her claims for punitive damages in state court. On December 2, 1996, the district court granted Combined's motion to join Williams as a cross-defendant, and ordered all parties to show cause as to why Williams should or should not be enjoined from pursuing her punitive damages claims. On January 22, 1997, the district court entered an order enjoining Williams from prosecuting her claims for punitive damages in state court.[11] Williams filed a notice of appeal.

II. DISCUSSION

A. *The August 19 Order*

In its August 19 Order, the district court "ordered, adjudged and decreed that no additional punitive damages be assessed in Alabama against Combined or any of its past or present agents for any allegations of the same

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dridge's state court claims for punitive damages. Williams also filed a motion to compel discovery which was denied by the district court in a February 6, 1997, order.

[10] Section 2283 provides that "[a] court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." 28 U.S.C. § 2283 (1994).

[11] This order was virtually identical to the order enjoining Elizabeth Aldridge. In this order, the district court concluded that an injunction was "necessary to protect" its August 19 order and enjoined Williams under the Anti-Injunction Act, 28 U.S.C. § 2283.

or similar Misconduct which occurred on or before the date of this Order." District Court Order, at 7 (August 19, 1996). Combined contends that the August 19 Order and its prohibition on future punitive damages awards is binding on Aldridge and Williams. We disagree.

In *Martin v. Wilks*, 490 U.S. 755, 109 S. Ct. 2180 (1989), a group of white firefighters sued the city of Birmingham, Alabama, alleging that they were being denied promotions in favor of less qualified black firefighters. The white firefighters alleged that the City was making promotion decisions on the basis of race in reliance on certain consent decrees entered in previous litigation to which the white firefighters were not parties.[12] *Id.* at 758, 109 S. Ct. at 2183. In rejecting the City's argument that the white firefighters' suit constituted an impermissible collateral attack on the consent decrees, the Court concluded that "it is a principle of general application in Anglo-American jurisprudence that one is not bound by a judgment *in personam* in a litigation in which he is not designated as a party or to which he has not been made a party by service of process." *Id.* at 761, 109 S. Ct. at 2184 (quoting *Hansberry v. Lee*, 311 U.S. 32, 40, 61 S. Ct. 115, 117 (1940)). The Court reasoned that

> [a] judment or decree among parties to a lawsuit resolves issues among them, but it does not conclude the rights of strangers to those proceedings. . . . Joinder as a party, rather than knowledge of a lawsuit and an opportunity to intervene, is the method by which potential parties are subjected to the juris-

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[12] In the previous litigation, the white firefighters appeared and filed objections as *amicus curiae* at a fairness hearing regarding the consent decrees. *Martin*, 490 U.S. at 759, 109 S. Ct. at 2183. The white firefighters also attempted to intervene in the previous litigation, but the trial court denied their motion to intervene as untimely. *Id.*

> diction of the court and bound by a judgment or decree.

Id. at 762, 765, 109 S. Ct. at 2184, 2186.[13]

The reasoning of the Supreme Court in *Martin v. Wilks* is applicable to the instant case. At the time that the district court entered the August 19 Order prohibiting future punitive damages awards, Aldridge and Williams were not parties to the *Steans* case and were not in privity with Sara Steans or the other settling plaintiffs. After reviewing the record and considering the arguments of Combined,[14] we see no reason in the instant case to make an exception to the "principle of general applica-

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[13] *But see* § 108 of the Civil Rights Act of 1991, 42 U.S.C. § 2000e-2(n)(1) (providing that a person who had notice of, and an opportunity to present objections to, a proposed consent decree, cannot challenge in a claim under the Constitution or federal civil rights laws an employment practice that implements the consent decree). Section 108 is not applicable to the instant case and does not change the analysis of the Supreme Court in *Martin v. Wilks* as applied to this case.

[14] Combined argues that the August 19 Order facilitates settlement and thus is supported by the "strong public policy favoring settlement." We note that an almost identical argument was rejected by the Supreme Court in *Martin v. Wilks*. In rejecting the City's argument that the congressional policy favoring voluntary settlement of employment discrimination claims supported binding the white firefighters to the consent decrees, the Court in *Martin v. Wilks* concluded that

> [a] vountary settlement in the form of a consent decree between one group of employees and their employer cannot possibly 'settle,' voluntarily or otherwise, the conflicting claims of another group of employees who do not join the agreement. . . . 'Parties who choose to resolve litigation through settlement may not dispose of the claims of a third party . . . without that party's agreement. A court's approval of a consent decree between some of the parties cannot dispose of the valid claims of nonconsenting intervenors.'

Id. at 768, 109 S. Ct. at 2188 (quoting *Firefighters v. Cleveland*, 478 U.S. 501, 529, 106 S. Ct. 3063, 3079 (1986)).

tion" that a judgment *in personam* is not binding on a person who is not designated as a party.[15] Therefore, we conclude that the district court's August 19 Order prohibiting future punitive damages awards is not binding on Aldridge and Williams.[16]

We also note that, at the time the district court entered the August 19 Order in the *Steans* case, Combined and Steans had already reached an agreement to settle their case.[17] During the August 19 hearing, Combined's counsel argued extensively for the district court to enter an order prohibiting future punitive damages awards in Alabama against Combined,[18] while Steans' counsel silently acquiesced.[19] After reviewing the record of the August

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15 In *Martin v. Wilks*, the Court noted an exception to the general rule "where a special remedial scheme exists expressly foreclosing successive litigation by nonlitigants, as for example in bankruptcy or probate." *Martin*, 490 U.S. at 762 n.2, 109 S. Ct. at 2184 n.2. No such exception is present in the instant case.

16 Because the August 19 Order was not binding on Aldridge and Williams, there was no need for them to appeal it.

17 At the August 18 hearing, the district court stated to the attorneys for Combined and Steans that "I take it then from both of you that you consider this case pending before me has been settled." Both of the attorneys responded "Yes, your honor." The district court then stated "[a]ll right. Then I will discharge the jury and we'll proceed from that and I will try to give you your order as soon as possible."

18 In support of its motion for an order prohibiting future punitive damages awards, Combined also introduced evidentiary material regarding the amount of damages it had paid in prior settlement agreements and regarding its operating profits in Alabama. Steans did not challenge Combined's evidentiary materials nor did she offer any competing evidence.

19 Midway through the August 19 hearing, Steans' counsel had made no arguments in opposition to the proposed order and thus the district court stated to Steans' counsel that "you are being awfully quiet down there." Steans' counsel responded that "[w]ell, your honor, we discussed this. They [settled] our cases and we are

19 hearing, we are satisfied that prior to the district court's entry of the August 19 Order, no party tested in an adversarial manner Combined's request for an order prohibiting future punitive damages awards. Steans had no interest in contesting Combined's position. In fact, she had an affirmative interest—i.e., her own settlement—in acquiescing to the August 19 Order. Under such circumstances, we attach no significance to the August 19 Order.

B. *The December 2 and January 22 Orders Enjoining Aldridge's and Williams' State Court Actions*

On December 2, 1996, and January 22, 1997, the district court entered orders enjoining Aldridge and Williams, respectively, from prosecuting their state court claims for punitive damages against Combined. We conclude that the district court abused its discretion in enjoining Aldridge and Williams because neither Aldridge nor Williams had a full and fair opportunity to litigate the issue. Aldridge and Williams were enjoined from prosecuting their state court punitive damages claims without a meaningful opportunity to present evidence, conduct discovery,[20] or test the veracity and sufficiency of Combined's

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excited." The only other comment made by Steans' counsel during the hearing was his acknowledgment that the parties had reached a settlement agreement . *See* supra note 17.

[20] Both Aldridge and Williams filed "Motion[s] for Leave to Propound Discovery and Motion[s] to Shorten Time for Combined to Respond." In these motions, Aldridge and Williams sought to compel discovery in order to be able to fully and fairly respond to the district court's show cause order. Aldridge and Williams sought to conduct discovery regarding (1) the settlement negotiations and agreement between Sara Steans and Combined, (2) documents and settlement agreements relating to other plaintiffs in the State of Alabama, and (3) information relating to the discovery undertaken by Steans concerning the degree of reprehensibility of Combined, the economic impact of any additional punitive damages verdicts on Combined, and Combined's "statutory profit" in Alabama. The district court denied Aldridge's and Williams' motions to compel discovery. See *supra* note 9.

evidence which served as the basis for the district court's August 19 Order.

We also note that in issuing the injunctions against Aldridge's punitive damages claims the district court concluded, that "the pursuit of such claims could nullify this court's [August 19] order and must therefore be enjoined under 28 U.S.C. § 2283." District Court Order, at 3 (December 2, 1996) (relying on the "necessary . . . to protect or effectuate its judgments" exception to the Anti-Injunction Act, 28 U.S.C. § 2283).[21] We are confident that a district court cannot enter a judgment purporting to bind nonparties over which it does not have jurisdiction, seek to join those nonparties to the underlying litigation,[22] and then issue an injunction against those parties based on a need to protect its earlier judgment. In light of our holding that the district court did not have authority to bind nonparties with its August 19 Order, we readily conclude that the district court can not rely on the "necessary to protect its judgments" exception to the Anti-Injunction Act in order to justify its injunctions prohibiting Aldridge and Williams from pursuing their punitive damages claims against Combined. Therefore, the district court's reliance on the Anti-Injunction Act is misplaced.

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[21] The district court reached the same conclusion in issuing its January 22, 1997, order enjoining Williams' punitive damages claims against Combined. District Court Order, at 3 (January 22, 1997).

[22] Aldridge and Williams also challenge the district court's October 21, 1996, and December 2, 1996, orders in which they were joined as "cross-defendants" under Fed. R. Civ. P. 21 to the *Steans* case. Aldridge and Williams argue that they were not properly made parties under Rule 21 because Combined did not comply with the requirements of Fed. R. Civ. P. 4 relating to the issuance of a summons and service on an added party. *See* 7 Charles A. Wright et al., Federal Practice and Procedure § 1688 (2d ed. 1986). Because the district court did not address this argument and the issue has not been adequately briefed on appeal, we decline to address it in the first instance. If the effort to enjoin Aldridge and Williams is pursued on remand, the district court shall address this argument.

Having concluded that the district court's orders enjoining Aldridge and Williams constituted an abuse of discretion because Aldridge and Williams did not have a full and fair opportunity to litigate, we need not address the harder issues entailed in Combined's attempt to attain a pre-trial limit on Aldridge's and Williams' claims for punitive damages.[23] With the instant poorly developed record and in the absence of a comprehensive analysis

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[23] However, we reject Combined's argument that its due process right to be free from the imposition of excessive punitive damages, a right articulated in *BMW of North America, Inc. v. Gore*, 517 U.S. 559, 116 S. Ct. 1589 (1996), would be rendered meaningless in the absence of the particular procedure and remedy reflected in the district court's judgment. In Alabama, a civil defendant has the right to request a post-verdict hearing under *Hammond v. City of Gadsden*, 493 So. 2d 1374 (Ala. 1986). In this post-verdict hearing, the trial court reviews the sufficiency of the evidence supporting a verdict for punitive damages and the excessiveness of the punitive damages award. *See* Ala. Code § 6-11-23(b) (1993) (providing for a post-verdict hearing on punitive damages); *Green Oil Co. v. Hornsby*, 539 So. 2d 218, 223-24 (Ala. 1989) (listing factors for the trial court to consider in determining whether a jury's award of punitive damages is excessive). In *Pacific Mutual Life Insurance Company v. Haslip*, 499 U.S. 1, 20-22, 111 S. Ct. 1032, 1044-45 (1991), the Supreme Court approved the procedures in Alabama for post-verdict review of juries' punitive damages awards. Further, in *BMW of North America, Inc. v. Gore, supra*, the Court considered an Alabama punitive damages award that had survived the Alabama review procedures, and the Court independently examined whether the award was so grossly excessive as to violate due process. Finally, in *Life Insurance Company of Georgia v. Johnson*, 701 So. 2d 524, 527-32 (Ala. 1997), the Alabama Supreme Court adopted the Supreme Court's *BMW* analysis as a supplement to its own review procedures. Thus, it cannot be said that Combined's due process rights under *BMW* would be rendered meaningless in the absence of the particular procedure employed by the district court in the instant case and in the absence of the particular remedy awarded by the district court. The foregoing procedures are available to Combined in the instant case and in any future case in Alabama in which punitive damages are assessed.

by the district court of all relevant concerns [24] (including comity concerns), we decline to speculate whether a legally supportable procedure (in addition to the procedures outlined in footnote 23) is available in federal court to accomplish what Combined seeks in the instant case.

In light of the foregoing, we conclude that the district court abused its discretion in enjoining Aldridge and Williams from prosecuting their state court claims for punitive damages against Combined, and thus the district court's December 2 and January 22 orders are vacated.

III. CONCLUSION

For the foregoing reasons, we hold that the district court's August 19, 1996, order is not binding on Aldridge and Williams, and we vacate the district court's December 2, 1996, and January 22, 1997, orders that enjoined Aldridge and Williams from prosecuting their punitive damages claims in state court.[25]

VACATED AND REMANDED.

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[24] *See, e.g., Ex parte Holland*, 692 So. 2d 811, 820-22 (Ala. 1997) (discussing relevant considerations); *Alfa Financial Corp. v. Key*, 927 F. Supp. 423, 428-431 (M.D. Ala. 1996) (discussing other considerations relevant in federal courts), *aff'd*, 112 F.2d 1172 (11th Cir. 1997) (unpublished table decision).

[25] We also vacate the district court's October 21, 1996, and December 2, 1996, orders. See *supra* note 22.

[Filed Dec. 2, 1998]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 97-6023

SARAH P. STEANS,
Plaintiff,

versus

COMBINED INSURANCE COMPANY OF AMERICA,
Defendant-Appellee,

ELIZABETH ALDRIDGE,
Cross-Defendant-Appellant,

DORIS WILLIAMS,
Cross-Defendant.

No. 97-6123

SARAH P. STEANS,
Plaintiff,

versus

COMBINED INSURANCE COMPANY OF AMERICA,
Defendant-Appellee,

ELIZABETH ALDRIDGE,
Cross-Defendant,

DORIS WILLIAMS,
Cros-Defendant-Appellant.

On Appeal from the United States District Court
for the Southern District of Alabama

ON PETITION(S) FOR REHEARING AND
SUGGESTION(S) OF REHEARING EN BANC

Before: ANDERSON and MARCUS, Circuit Judges, and HANCOCK*, Senior District Judge.

PER CURIAM:

The Petition(s) for Rehearing are DENIED and no member of this panel nor other Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 35-5), the Suggestion(s) of Rehearing En Banc are DENIED.

ENTERED FOR THE COURT:

/s/ R. L. Anderson
United States Circuit Judge

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* Honorable James Hancock, Senior U.S. District Judge for Northern District of Alabama, sitting by designation.

[Filed Feb. 8, 1999]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 98-06323

SARAH P. STEANS,
Plaintiff,

versus

COMBINED INSURANCE COMPANY OF AMERICA,
Defendant-Appellee,

GARY BLACKWELL;
LAVONDA BLACKWELL,
Cross-Defendants-Appellants.

On Appeal from the United States District Court
for the Southern District of Alabama

BEFORE: HATCHETT, Chief Judge, TJOFLAT and EDMONDSON, Circuit Judges.

BY THE COURT:

Appellants' motion for summary reversal is GRANTED. *See Steans v. Combined Insurance Company of America*, 148 F.3d 1266 (11th Cir. 1998).

[Filed Apr. 2, 1998]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 95-0809-BH-M

SARAH P. STEANS,

Plaintiff,

v.

COMBINED INSURANCE COMPANY OF AMERICA, *et al.*,

Defendants.

ORDER

This action is now before the court on defendants' motion (Doc. 88) to add Lavonda Blackwell and Gary Blackwell (collectively "Blackwell") as a cross-defandants and to enjoin their state court action, *Lavonda Blackwell and Gary Blackwell v. Combined Insurance Company of America,* Case No. CV-96-632, now pending in the Circuit Court of Mobile County, Alabama. Upon consideration of the motion and pertinent portions of the record, the court first concludes and it is therefore ORDERED that defendants' motion is due to be and is hereby GRANTED to the extent it seeks to ADD Lavonda Blackwell and Gary Blackwell to this action as a cross-defendants. *See e.g.,* Fed.R.Civ.P. 21; *Haywood v. Clay,* 456 F.Supp. 1156, 1161 (D.S.C. 1977); *Aero Corp. v. Department of the Navy,* 493 F.Supp. 558, 569 (D. D.C. 1981).

With respect to the injunctive relief sought, the Court also concludes that Combined's motion is due to be granted. Counsel representing the Blackwells also repre-

sent cross-defendants Doris Williams (Williams) and Elizabeth Aldridge (Aldridge) who were similarly enjoined from prosecuting their punitive damage claim against Combined Insurance.[1] The Blackwells' counsel, Mr. C. S. Chiepalich and Mr. George W. Finkbohner, III, were not only aware of the Court's order entered August 19, 1996, prohibiting the assessment of additional punitive damages in Alabama against Combined and the several injunctions issued thereafter by this Court in an effort to protect the Court's judgment but were given ample opportunity with respect to cross-defendants Williams and Aldridge to address the Court's authority to protect its judgment. The Court will, therefore, take Combined's motion to enjoin under submission without further unnecessary delay.

The court specifically concludes that an injunction is necessary to protect this court's judgment by order entered August 19, 1996, that "no additional punitive damages may be assessed in Alabama against Combined" arising out of certain acts of alleged misconduct. The court's judgment regarding the sufficiency of the punitive damages paid to date by Combined was reached only after careful consideration of, *inter alia*, the findings of Judge William Robertson in *Russaw v. Combined Insurance Company of America*, No. CV-95-019 (Cir. Ct. Barbour Co.); the factors outlined in *BMW North American Inc. v. Gore*, —— U.S. ——, 116 S. Ct. 1589, 134 L.Ed. 2d 809 (1996), *Green Oil Co. v. Hornsby*, 539 So.2d 218 (Ala. 1989), *Hammond v. City of Gadsden*, 493 So.2d 1374 (Ala. 1986), and Ala. Code § 6-11-23 (1975); the

[1] Doris Williams was enjoined from prosecuting her punitive damage claims in *Doris Williams v. Combined Insurance Company of America, et al.*, Case No. CV-94-72, then pending in the Circuit Court of Mobile County, Alabama. Elizabeth Aldridge was enjoined from prosecuting her punitive damage claims in *Elizabeth Aldridge v. Combined Insurance Company of America, et al.*, Case No. CV-95-93, then pending in the Circuit Court of Marengo County, Alabama.

evidence that Combined had agreed to pay over $8 million to settle 63 similar cases involving claims as to which the compensatory damages sustained by the plaintiffs would not likely exceed $1,000 and were in most cases less than $500; the fact that the amount of punitive damages offered by Combined is four-and-one-half times Combined's entire statutory profits earned in the State of Alabama between 1985 and 1995; the fact that the ratio of the punitive damages offered by Combined to the compensatory damages claimed in these cases is more than 125 to 1; and the evidence that Combined has taken affirmative action to change its method of operation in 1995 and 1996 to prevent the alleged misconduct at issue in these litigations. It was, and remains, the court's conclusion that:

> [ ] The payment by Combined of the amounts it has either paid or agreed to pay is sufficient to punish Combined for the alleged Misconduct and to defer Combined and others from similar Misconduct in the future.
>
> [ ] The cumulative amount which Combined has paid or agreed to pay is adequate, when coupled with other payments made and expenses incurred, to fully punish and deter Combined and all of its current and former agents with respect to any and all of Combined's, or its agents', Misconduct which has occurred up to and including [August 19, 1996].

Order of August 19, 1996, at p. 6, ¶¶ 5 and 6. Inasmuch as the Blackwell's claim for punitive damages in the pending state court action is based on the same acts of misconduct for which Combined has already been punished by the payment of significant punitive damages, pursuit of such claims could nullify this court's order and must therefore be enjoined under 28 U.S.C. § 2283.[2]

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[2] Section 2283 of Title 28 of the United States Code provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized

This court is required in this case to take action to protect its own judgment that "no additional punitive damages may be assessed in Alabama against Combined or any of its past or present agents for any allegations of the same or similar Misconduct which occurred on or before [August 19, 1996]." Order of August 19, 1996, at p. 7. As Judge Albritton acknowledged in *Alfa Financial Corp. v. Key*, 927 F.Supp. 423 (M.D. Ala. 1996):

> [P]rocedures to protect civil defendants from excessive punitive damages awards . . . are required by the Due Process Clause of the Fourteenth Amendment of the United States Constitution which imposes a limit on punitive damage awards. *See Honda Motor Co. v. Oberg*, —— U.S. ——, ——, 114 S.Ct. 2331, 2335, 129 L.Ed.2d 336 (1994); *TXO Prod. Corp. v. Alliance Resources, Corp.*, 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993); *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1, 22, 111 S.Ct. 1032, 1045, 113 L.Ed.2d 1 (1991).

927 F.Supp. at 429 (emphasis added). The purpose of punitive damages is only to punish the defendant for his/her misconduct and to deter any similar misconduct in the future.[3] The purpose is not to either compensate the plaintiff or to bankrupt and destroy the defendant. *Cf.*, Owen, The Moral Foundations of Punitive Damages, 40 Ala. L. Rev. 705, 739 (1989) ("Yet punitive damages are a powerful remedy which itself may be abused, causing serious damage to public and private interests and moral values."), *quoted in, Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1, 18, 111 S.Ct. 1032, 1043, 113

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by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283 (emphasis added).

[3] *See, Green Oil Co. v. Hornsby*, 539 So.2d 218, 222 (Ala. 1989) ("[P]unitive damages must not exceed an amount that will accomplish society's goal of punishment and deterrence.").

L.Ed.2d 1 (1991). Consequently, a judicial determination that the defendant has, for specific claims of misconduct, paid enough to satisfy the legitimate purposes for the imposition of punitive damages would be rendered meaningless if the defendant was nonetheless forced to defend against further punitive damage claims for identical misconduct. This is particularly true when such a judicial determination is made only after utilizing the procedures established by state law and required by the Due Process Clause of the Fourteenth Amendment of the United States Constitution to safeguard against the imposition of excessive punitive damage awards. *See e.g., Green Oil Co.*, 539 So.2d at 223-224; *Hammond v. City of Gadsden*, 493 So.2d 1374 (Ala. 1986), and Ala. Code § 6-11-23 (1975). The *Hammond* criteria has been applauded by the Supreme Court as a mechanism which "ensures that punitive damages awards are not grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages." *Haslip, supra*, 499 U.S. at 22, 111 S.Ct. at 1045.

Unlike an assessment of compensatory damages which focuses on the plaintiff(s), an assessment of puntive damages must focus on the defendant and the defendant's misconduct. *See e.g., Pitt v. Century II, Inc.*, 631 So.2d 235, 239 (Ala. 1993). As applied to the case at bar, the amount of punitive damages paid by Combined for the same alleged misconduct has been evaluated by both the Circuit Court of Barbour County, Alabama, and this federal court, each of which has focused on Combined and Combined's misconduct and determined that the payment of additional punitive damages for the same misconduct would be excessive and violative of both the United States and Alabama Constitutions. There comes a point where all things must come to an end. As stated above, the pursuit of additional punitive damages against Combined in the State of Alabama would nullify this court's order of August 19, 1996, and must therefore be enjoined under 28 U.S.C. § 2283. Such an injunction will not jeopardize

"the harmonious relations necessary to the functioning of our federal system." *Southwest Airlines Co. v. Texas International Airlines, Inc.*, 546 F.2d 84, 91 (5th Cir. 1977). As the Fifth Circuit explained:

> Congress has specifically excepted from the ban of section 2283 all injunctions "to protect or effectuate . . . judgments" of the federal judiciary. This unqualified exception recognizes that the states, as well as the federal government, have a responsibility to maintain the harmony we cherish. As we first said in *Jacksonville Blow Pipe v. Reconstruction Finance Corp.*, 5 Cir. 1957, 244 F.2d 394, 400:
>
> > [N]othing would be as productive of friction between the state and federal courts as to permit a state court to interpret and perhaps to upset such a judgment of a federal court.
>
> Friction is also avoided by an injunction that:
>
> > prevents multiple litigation of the same cause of action and . . . assures the winner in a federal court that he will not be deprived of the fruits of his victory by a later contrary state judgment which the Supreme Court may or may not decide to review.

546 F.2d at 91. The fact that the injunction sought in the instant case is to prevent multiple litigation of the same punitive damage claims does not alter the above quoted principles. As the Eleventh Circuit recognized in *Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353, 1358 (11th Cir. 1996):

> An injured party is not entitled to punitive damages as a matter of right. *City Bank of Alabama v. Eskridge*, 521 So.2d 931, 933 (Ala. 1988). Rather, the state and not the victim is considered the true party plaintiff because punitive damages do not compensate a victim for loss but serve to punish and deter.

> *Maryland Casualty Co. v. Tiffin*, 537 So.2d 469, 471 (Ala. 1988). Thus, similar to Mississippi punitive damages, Alabama punitive damages are awarded for the public benefit—the collective good.

Therefore, as was true in *Southwest Airlines*, the above-quoted principles support the injunction sought in the case at bar.

For the reasons stated above, it is *ORDERED* that Combined's motion to enjoin (Doc. 88) be and is hereby GRANTED and that cross-defendants Lavonda Blackwell and Gary Blackwell be and is hereby ENJOINED from prosecuting his claims for punitive damages against Combined in *Lavonda Blackwell and Gary Blackwell v. Combined Insurance Company of America*, Case No. CV-96-632, now pending in the Circuit Court of Mobile County, Alabama. The Court will reconsider this decision only if, on or before April 16, 1998, the Blackwells file a motion for reconsideration and SHOWS CAUSE therein why the motion to enjoin ought not to have been granted.

DONE this 2nd day of April, 1998.

/s/ W. B. Hand
Senior District Judge

[Filed Jan. 22, 1997]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 95-0809-BH-M

SARAH P. STEANS,

Plaintiff,

v.

COMBINED INSURANCE COMPANY OF AMERICA, *et al.*,

Defendants.

ORDER

This action is before the court on the motion (Tab 40) filed by defendant Combined Insurance Company of America (Combined) to enjoin cross-defendant Doris Williams from prosecuting her claims for punitive damages in *Doris Williams v. Combined Insurance Company of America, et al.*, Case No. CV-95-1803, now pending in the Circuit Court of Mobile County, Alabama. Upon consideration of the motion, the parties' respective arguments in support thereof and in opposition thereto and pertinent portions of the record, the court concludes that Combined's motion is due to be granted.

The court specifically concludes that an injunction is necessary to protect this court's judgment by order entered August 19, 1996, that "no additional punitive damages may be assessed in Alabama against Combined" arising out of certain acts of alleged misconduct. The court's judgment regarding the sufficiency of the punitive damages paid to date by Combined was reached only after careful consideration of, *inter alia*, the findings of Judge William

Robertson in *Russaw v. Combined Insurance Company of America,* No. CV-95-019 (Cir. Ct. Barbour Co.); the factors outlined in *BMW North American Inc. v. Gore,* —— U.S. ——, 116 S. Ct. 1589, 134 L.Ed.2d 809 (1996), *Green Oil Co. v. Hornsby,* 539 So.2d 218 (Ala. 1989), *Hammond v. City of Gadsden,* 493 So.2d 1374 (Ala. 1986), and Ala. Code § 6-11-23 (1975); the evidence that Combined had agreed to pay over $8 million to settle 63 similar cases involving claims as to which the compensatory damages sustained by the plaintiffs would not likely exceed $1,000 and were in most cases less than $500; the fact that the amount of punitive damages offered by Combined is four-and-one-half times Combined's entire statutory profits earned in the State of Alabama between 1985 and 1995 [1]; the fact that the ratio of the punitive damages offered by Combined to the compensatory damages claimed in these 63 cases is more than 125 to 1; and the evidence that Combined has taken affirmative action to change its method of operation in 1995 and 1996 to prevent the alleged misconduct at issue in these litigations. It was, and remains, the court's conclusion that:

> [] The payment by Combined of the amounts it has either paid or agreed to pay is sufficient to punish Combined for the alleged Misconduct and to deter Combined and others from similar Misconduct in the future.
>
> [] The cumulative amount which Combined has paid or agreed to pay is adequate, when coupled with other payments made and expenses incurred, to fully punish and deter Combined and all of its current and former agents with respect to any and all of Combined's, or its agents', Misconduct which has occurred up to and including [August 19, 1996].

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[1] Williams challenge to the court's finding concerning the ratio between the punitive damages paid and the statutory profits earned by Combined is specious.

Order of August 19, 1996, at p. 6, ¶¶ 5 and 6. Inasmuch as Williams' claim for punitive damages in the pending state court action is based on the same acts of misconduct for which Combined has already been punished by the payment of significant punitive damages, pursuit of such claims could nullify this court's order and must therefore be enjoined under 28 U.S.C. § 2283.[2]

Williams challenges the court's imposition of an injunction principally on the grounds that Rule 20 of the Federal Rules of Civil Procedure does not authorize joinder of parties to a lawsuit after the lawsuit has been litigated, settled and dismissed; she has never been served with a summons and properly hailed into court pursuant to Rule 4 of the Federal Rules of Civil Procedure; as of August 19, 1996, there existed no case and controversy to vest this court with jurisdiction to enter its order prohibiting the imposition of further punitive damages; she was not a party to this lawsuit and therefore was not allowed to challenge the evidence presented in support of a limitation on further punitive damages; the court lacked authority to prohibit the imposition of future punitive damages in a case where the parties settle without a jury trial or jury award of punitive damages; Judge McDermott's order on January 5, 1996, in *Stabler v. Combined,* CV-93-2750, denying Combined's request to prohibit the imposition of further punitive damages should constitute *res judicata* against this Court's August 19, 1996, order; the $8.25 million that must be paid by Combined pursuant to the settlement agreements it has thus far entered into does not somehow really equate with $8.25 million; Combines' loss ratios rather than statutory profits should govern the

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[2] Section 2283 of Title 28 of the United States Code provides:

> A court of the United States may not grant an injunction to stay procedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283 (emphasis added).

amount of punitive damages. Williams also adopted the arguments heretofore presented by Elizabeth Aldridge in this action.

Unlike Williams contentions regarding traditional joinder and *res judicata* principles, this court is required in this case to take action to protect its own judgment that "no additional punitive damages may be assessed in Alabama against Combined or any of its past or present agents for any allegations of the same or similar Misconduct which occurred on or before [August 19, 1996]." Order of August 19, 1996, at p. 7. As Judge Albritton acknowledged in *Alfa Financial Corp. v. Key*, 927 F.Supp. 423 (M.D. Ala. 1996):

> [P]rocedures to protect civil defendants from excessive punitive damages awards . . . are required by the Due Process Clause of the Fourteenth Amendment of the United States Constitution which imposes a limit on punitive damage awards. *See Honda Motor Co. v. Oberg*, —— U.S. ——, ——, 114 S.Ct. 2331; 2335, 129 L.Ed.2d 336 (1994); *TXO Prod. Corp. v. Alliance Resources, Corp.*, 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993); *Pacific Mutual Life. Ins. Co. v. Haslip*, 499 U.S. 1, 22, 111 S.Ct. 1032, 1045, 113 L.Ed.2d 1 (1991).

927 F.Supp. at 429 (emphasis added). The purpose of punitive damages is only to punish the defendant for his/its misconduct and to deter any similar misconduct in the future [3]. The purpose is not to either compensate the plaintiff [4] or to bankrupt and destroy the defendant. *Cf.*,

[3] *See, Green Oil Co. v. Hornsby*, 539 So.2d 218, 222 (Ala. 1989) ("[P]unitive damages must not exceed an amount that will accomplish society's goal of punishment and deterrence.").

[4] Williams concedes that there exists no constitutional right to collect punitive damages from an alleged wrongdoer. *See e.g., BMW of North America v. Gore*, 646 So.2d 619, 631 (Ala. 1994) (Houston, J., concurring specially) ("[P]laintiffs have no right to punitive damages.").

Owen, The Moral Foundations of Punitive Damages, 40 Ala. L. Rev. 705, 739 (1989) ("Yet punitive damages are a powerful remedy which itself may be abused, causing serious damage to public and private interests and moral values."), *quoted in, Pacific Mutual Life Ins. Co. v. Haslip,* 499 U.S. 1, 18, 111 S.Ct. 1032, 1043, 113 L.Ed.2d 1 (1991). Consequently, a judicial determination that the defendant has, for specific claims of misconduct, paid enough to satisfy the legitimate purposes for the imposition of punitive damages would be rendered meaningless if the defendant was nonetheless forced to defend against further punitive damage claims for identical misconduct. This is particularly true when such a judicial determination is made only after utilizing the procedures established by state law and required by the Due Process Clause of the Fourteenth Amendment of the United States Constitution to safeguard against the imposition of excessive punitive damage awards. *See e.g., Green Oil Co.,* 53 So.2d at 223-224; *Hammond v. City of Gadsden,* 493 So.2d 1374 (Ala. 1986), and Ala. Code § 6-11-23 (1975). The *Hammond* criteria has been applauded by the Supreme Court as a mechanism which "ensures that punitive damages awards are not grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages." *Haslip, supra,* 499 U.S. at 22, 111 S.Ct. at 1045.

Unlike an assessment of compensatory damages which focuses on the plaintiff(s), an assessment of punitive damages must focus on the defendant and the defendant's misconduct. *See e.g., Pitt v. Century II, Inc.,* 631 So.2d 235, 239 (Ala. 1993). As applied to the case at bar, the amount of punitive damages paid by Combined for the same alleged misconduct has been evaluated by both the Circuit Court of Barbour County, Alabama, and this federal court, each of which has focused on Combined and Combined's misconduct and determined that the payment of additional punitive damages for the same misconduct would be excessive and violative of both the

United States and Alabama Constitutions. There comes a point where all things must come to an end. As stated above, the pursuit of additional punitive damages against Combined in the State of Alabama would nullify this court's order of August 19, 1996, and must therefore be enjoined under 28 U.S.C. § 2283. Such an injunction will not jeopardize "the harmonious relations necessary to the functioning of our federal system." *Southwest Airlines Co. v. Texas International Airlines, Inc.*, 546 F.2d 84, 91 (5th Cir. 1977). As the Fifth Circuit explained:

> Congress has specifically excepted from the ban of section 2283 all injunctions "to protect or effectuate . . . judgments" of the federal judiciary. This unqualified exception recognizes that the states, as well as the federal governmnet, have a responsibility to maintain the harmony we cherish. As we first said in *Jacksonville Blow Pipe v. Reconstruction Finance Corp.*, 5 Cir. 1957, 244 F.2d 394, 400:
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> > [N]othing would be as productive of friction between the state and the federal courts as to permit a state court to interpret and perhaps to upset such a judgement of a federal court.
>
> Friction is also avoided by an injunction that:
>
> > prevents multiple litigation of the same cause of action and . . . assures the winner in a federal court that he will not be deprived of the fruits of his victory by a later contrary state judgment which the Supreme Court may or may not decide to review.

546 F.2d at 91. The fact that the injunction sought in the instant case is to prevent multiple litigation of the same punitive damage claims does not alter the above quoted principles. As the Eleventh Circuit recognized in *Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353, 1358 (11th Cir. 1996):

> An injured party is not entitled to punitive damages as a matter of right. *City Bank of Alabama v. Eskridge*, 521 So. 2d 931, 933 (Ala. 1988). Rather, the state and not the victim is considered the true party plaintiff because punitive damages do not compensate a victim for loss but serve to punish and deter. *Maryland Casualty Co. v. Tiffin*, 537 So.2d 469, 471 (Ala. 1988). Thus, similar to Mississippi punitive damages, Alabama punitive damages are awarded for the public benefit—the collective good.

Therefore, as was true in *Southwest Airlines*, the above-quoted principles support the injunction sought in the case at bar.

For the reasons stated above, it is ORDERED that Combined's motion to enjoin (Tab 34) be and is hereby GRANTED and that cross-defendant Doris Williams be and is hereby ENJOINED from prosecuting her claims for punitive damages against Combined in *Doris Williams v. Combined Insurance Company of America, et al.*, Case No. CV-95-1803, now pending in the Circuit Court of Mobile County, Alabama.

DONE this 22nd day of January, 1997.

/s/ W. B. Hand
Senior District Judge

[Filed Dec. 2, 1996]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 95-0809-BH-M

SARAH P. STEANS,
Plaintiff,

v.

COMBINED INSURANCE COMPANY OF AMERICA, *et al.*,
Defendants.

ORDER

This action is before the court on the motion (Tab 34) filed by defendant Combined Insurance Company of America (Combined) to enjoin cross-defendant Elizabeth Aldridge from prosecuting her claims for punitive damages in *Elizabeth Aldridge v. Combined Insurance Company of America, et al.*, Case No. CV-95-93, now pending in the Circuit Court of Marengo County, Alabama. Upon consideration of the motion, the parties' respective arguments in support thereof and in opposition thereto and pertinent portions of the record, the court concludes that Combined's motion is due to be granted.

The court specifically concludes that an injunction is necessary to protect this court's judgment by order entered August 19, 1996, that "no additional punitive damages may be assessed in Alabama against Combined" arising out of certain acts or alleged misconduct. The court's judgment regarding the sufficiency of the punitive damages paid to date by Combined was reached only after careful consideration of, *inter alia*, the findings of Judge William Robertson in *Russaw v. Combined Insur-*

ance Company of America, No. CV-95-019 (Cir. Ct. Barbour Co.); the factors outlined in *BMW North American Inc. v. Gore*, —— U.S. ——, 116 S. Ct. 1589, 134 L.Ed.2d 809 (1996), *Green Oil Co. v. Hornsby*, 539 So.2d 218 (Ala. 1989), *Hammond v. City of Gadsden*, 493 So.2d 1374 (Ala. 1986), and Ala. Code § 6-11-23 (1975); the evidence that Combined had agreed to pay over $8 million to settle 63 similar cases involving claims as to which the compensatory damages sustained by the palintiffs would not likely exceed $1,000 and were in most cases less than $500; the fact that the amount of punitive damages offered by Combined is four-and-one-half times Combined's entire statutory profits earned in the State of Alabama between 1985 and 1995; the fact that the ratio of the punitive damages offered by Combined to the compensatory damages claimed in these 63 cases is more than 125 to 1; and the evidence that Combined has taken affirmative action to change its method of operation in 1995 and 1996 to prevent the alleged misconduct at issue in these litigations. It was, and remains, the court's conclusion that:

> [ ] The payment by Combined of the amounts it has either paid or agreed to pay is sufficient to punish Combined for the alleged Misconduct and to deter Combined and others from similar Misconduct in the future.
>
> [ ] The cumulative amount which Combined has paid or agreed to pay is adequate, when coupled with other payments made and expenses incurred, to fully punish and deter Combined and all of its current and former agents with respect to any and all of Combined's, or its agents', Misconduct which has occurred up to and including [August 19, 1996].

Order of August 19, 1996, at p. 6, ¶¶ 5 and 6. Inasmuch as Aldridge's claim for punitive damages in the pending state court action is based on the same acts of misconduct for which Combined has already been punished by

the payment of significant punitive damages, pursuit of such claims could nullify this court's order and must therefore be enjoined under 28 U.S.C. § 2283.[1]

Aldridge challenges the court's imposition of an injunction principally on the grounds that she did not receive prior notice of either this court's August 19, 1996 hearing or the resulting order regarding the limitation on any future imposition of punitive damages against Combined; she was not a party to this lawsuit and therefore was not allowed to challenge the evidence presented in support of a limitation on further punitive damages; her state court action was filed approximately one month prior to this action; and this issue is not ripe for injunction until a jury verdict for punitive damages is rendered in her state court action. In addition to her attempt to distinguish cases cited by Combined in support of an injunction, Aldridge relies on Judge Albritton's decision in *Alfa Financial Corp. v. Key*, 927 F.Supp. 423 (M.D. Ala. 1996), to dismiss an interpleader action filed solely for the purpose of obtaining a declaration that, by virtue of an order similar to the *Russaw* order relied upon by this court in the case at bar[2], "additional awards of punitive

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[1] Section 2283 of Title 28 of the United States Code provides:

> A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments.

28 U.S.C. § 2283 (emphasis added).

[2] The order relied upon by the plaintiffs in *Alfa Financial Corp. v. Key*, 927, F.Supp. 423 (M.D. Ala. 1996), was issued in *Christ v. Alfa Life Ins. Corp.*, No. CV-94-022 (Ala. Cir. Ct. Barbour Co. Feb. 23, 1994), upon the settlement of that action and following a *Hammond* hearing to determine whether the settlement amount for punitive damages was sufficient to punish the plaintiffs adequately for their alleged fraudulent pattern and practice. *See* Ala. Code § 6-11-23; *Hammond v. City of Gadsden*, 493 So.2d 1374 (Ala. 1986). The order declared that Alfa had paid sufficient punitive damages to punish it for the alleged wrongful conduct and to deter

damages are prohibited and . . . Defendants' claims for punitive damages are unconstitutional under the Constitution of the United States and the Constitution of the State of Alabama." 927 F.Supp. at 427. Judge Albritton dismissed the action for lack of jurisdiction under the federal interpleader statute, 28 U.S.C. § 1335, reasoning as follows:

> Due to the availability of procedures to safeguard aaginst excessive punitive damage awards, the [Interpleader] Plaintiffs in this case do not face the risk of being subjected to an award that exceeds either the limits of the Due Process Clause of the United States Constitution or the limits of the Constitution of the State of Alabama.

927 F.Supp. at 430. Judge Albritton had neither been called upon to enter an independent judgment regarding the sufficiency of punitive damages in a civil tort action on his own docket nor to enjoin the pursuit of a state court action in order to protect such a judgment under 28 U.S.C. § 2283. The question before Judge Albritton was not, therefore, a question concerning the value and significance of his own judgment.

In contrast to *Alfa*, this court is required to take action to protect its own judgment that "no additional punitive damages may be assessed in Alabama against Combined or any of its past or present agents for any allegations of the same or similar Misconduct which occurred on or before [August 19, 1996]." Order of August 19, 1996, at p. 7. As Judge Albritton acknowledged:

> [P]rocedures to protect civil defendant from excessive punitive damages awards . . . are requared by the Due Process Clause of the Fourteenth Amend-

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misconduct in the future. The order also declared that the imposition of additional punitive damages in excess of that already paid in settlement "would constitute duplicative, multiple and unjust punishment." *See, Alfa*, 927 F.Supp. at 426.

> ment of the United States Constitution which imposes a limit on punitive damage awards. *See Honda Motor Co. v. Oberg*, — U.S. —, —, 114 S.Ct. 2331, 2335, 129 L.Ed.2d 336 (1994); *TXO Prod. Corp. v. Alliance Resources, Corp.*, 509 U.S. 443, 113 S.Ct. 2711, 125 L.Ed.2d 366 (1993); *Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1, 22, 111 S.Ct. 1032, 1045, 113 L.Ed.2d 1 (1991).

927 F.Supp. at 429 (emphasis added). The purpose of punitive damages is only to punish the defendant for his/its miconduct and to deter any similar misconduct in the future.[3] The purpose is not to either compensate the plaintiff[4] or to bankrupt and destroy the defendant. *Cf.*, Owen, The Moral Foundation of Punitive Damages, 40 Ala. L. Rev. 705, 739 (1989) ("Yet punitive damages are a powerful remedy which itelf may be abused, causing serious damage to public and private interests and moral values."), *quoted in, Pacific Mutual Life Ins. Co. v. Haslip*, 499 U.S. 1, 18, 111 S.Ct. 1032, 1043, 113 L.Ed.2d 1 (1991). Consequently, a judicial determination that the defendant has, for specific claims of misconduct, paid enough to satisfy the legitimate purposes for the imposition of punitive damages would be rendered meaningless if the defendant was nonetheless forced to defend against further punitive damage claims for identical misconduct. This is particularly true when such a judicial determination is made only after utilizing the procedures etablished by state law and required by the Due Proces Clause of the Fourteenth Amendment of the United States Constitution to

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[3] *See, Green Oil Co. v. Hornsby*, 539 So.2d 218, 222 (Ala. 1989) ("[P]unitive damages must not exceed an amount that will accomplish society's goal of punishment and deterrence.").

[4] Aldridge concedes that there exists no constitutional right to collect punitive damages from an alleged wrongdoer. *See e.g., BMW of North America v. Gore*, 646 So.2d 619, 631 (Ala. 1994) (Houston, J., concurring specially) ("[P]laintiffs have no right to punitive damages.").

safeguard against the imposition of excessive punitive damage awards. *See e.g., Green Oil Co.,* 539 So.2d at 223-224; *Hammond v. City of Gadsden,* 493 So.2d 1374 (Ala. 1986), and Ala. Code § 6-11-23 (1975). The *Hammond criteria* has been applauded by the Supreme Court as a mechanism which "ensures that punitive damages awards are not grossly out of proportion to the severity of the offense and have some understandable relationship to compensatory damages." *Haslip, supra,* 499 U.S. at 22, 111 S.Ct. at 1045.

Unlike an assessment of compensatory damages which focuses on the plaintiff(s), an assessment of punitive damage must focus on the defendant and the defendant's misconduct. *See e.g., Pitt v. Century II, Inc.,* 631 So.2d 235, 239 (Ala. 1993). As applied to the case at bar, the amount of punitive damages paid by Combined for the same alleged misconduct has been evaluated by both the Circuit Court of Barbour County, Alabama, and this federal court, each of which has focused on Combined and Combined's misconduct and determined that the payment of additional punitive damages for the same misconduct would be excessive and violative of both the United States and Alabama Constitutions. There comes a point where all things must come to an end. As stated above, the pursuit of additional punitive damages against Combined in the State of Alabama would nullify this court' order of August 19, 1996, and must therefore be enjoined under 28 U.S.C. § 2283. Such an injunction will not jeopardize "the harmonious relations necessary to the functioning of our federal system." *Southwest Airlines Co. v. Texas International Airlines, Inc.,* 546 F.2d 84, 91 (5th Cir. 1977). As the Fifth Circuit explained:

> Congress has specifically excepted from the ban of section 2285 all injunctions "to protect or effectuate . . . . judgments" of the federal judiciary. This unqualified exception recognizes that the states, as well

> as the federal government, have a responsibility to maintain the harmony we cherish. As we first said in *Jacksonville Blow Pipe v. Reconstruction Finance Corp.*, 5 Cir. 1957, 244 F.2d 394, 400:
>
> > [N]othing would be as productive of friction between the state and federal courts as to permit a state court to interpret and perhaps to upset such a judgement of a federal court.
>
> Friction is also avoided by an injunction that:
>
> > prevents multiple litigation of the same cause of action and . . . assures the winner in a federal court that he will not be deprived of the fruits of his victory by a later contrary state judgment which the Supreme Court may or may not decide to review.

546 F.2d at 91. The fact that the injunction sought in the intant case is to prevent multiple litigation of the same punitive damage claims does not alter the above quoted principles. As the Eleventh Circuit recognized in *Tapscott v. MS Dealer Service Corp.*, 77 F.3d 1353, 1358 (11th Cir. 1996):

> An injured party is not entitled to punitive damages as a matter of right. *City Bank of Alabama v. Eskridge*, 521 So.2d 931, 933 (Ala. 1988). Rather, the state and not the victim is considered the true party plaintiff because punitive damages do not compensate a victim for loss but serve to punish and deter. *Maryland Casualty Co. v. Tiffin*, 537 So.2d 469, 471 (Ala. 1988). Thus, similar to Mississippi punitive damages, Alabama punitive damages are awarded for the public benefit the collective good.

Therefore, as was true in *Southwest Airlines*, the above-quoted principles support the injunction sought in the case at bar.

For the reasons stated above, it is ORDERED that Combined's motion to enjoin (Tab 34) be and is hereby GRANTED and that cross-defendant Elizabeth Aldridge be and is hereby ENJOINED from prosecuting her claims for puniitve damages against Combined in *Elizabeth Aldridge v. Combined Insurance Company of America, et al.*, Case No. CV-95-93, now pending in the Circuit Court of Marengo County, Alabama.

DONE this 2nd day of December, 1996.

/s/ W. B. Hand
Senior District Judge

[Filed Dec. 2, 1996]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 95-0809-BH-M

SARAH P. STEANS,
Plaintiff,

v.

COMBINED INSURANCE COMPANY OF AMERICA, *et al.*,
Defendants.

ORDER

This action is now before the court on defendants' motion (Tab 40) to add Doris Williams as a cross-defendant and to enjoin her state court action, *Doris Williams v. Combined Insurance Company of America, et al.*, Case No. €V-95-1803, now pending in the Circuit Court of Mobile County, Alabama. Upon consideration of the motion and pertinent portions of the record, the court first concludes and it is therefore ORDERED that defendants' motion is due to be and is hereby GRANTED to the extent it seeks to ADD Doris Williams to this action as a cross-defendant. *See e.g.*, Fed.R.Civ.P.21; *Haywood v. Clay*, 456 F.Supp. 1156, 1161 (D S.C 1977); *Aero Corp v. Department of the Navy*, 493 F.Supp. 558, 569 (D. D.C. 1981).

With respect to the injunctive relief sought, it is ORDERED that ms Williams SHOW CAUSE in writing on or before December 12, 1996, why Combined's motion ought not to be granted. The court has this day granted similar relief against Elizabeth Aldridge, added as

a cross-defendant on October 21, 1996 (Tab 37), prohibiting the prosecution of her claims for punitive damages in *Elizabeth Aldridge v. Combined Insurance Company of America, et al.*, Case No. CV-95-93, now pending in the Circuit Court of Marengo County, Alabama. Although the court intends to take any action necessary to prevent interference with its August 19, 1996, order regarding the sufficiency of the punitive damages paid to date by Combined, the court will not rule on Combined' motion to enjoin Ms. Williams until Ms. Williams has responded to the motion. The court will take the matter under submission on December 13, 1996.

DONE this 2nd day of December, 1996.

/s/ W. B. Hand
Senior District Judge

[Filed Oct. 21, 1996]

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 95-0809-BH-M

SARAH P. STEANS,
Plaintiff,

v.

COMBINED INSURANCE COMPANY OF AMERICA, *et al.*,
Defendants.

ORDER

This action is before the court on defendants' motion (Tab 34) to add Elizabeth Aldredge as a cross-defendant and to enjoin her state court action, *Elizabeth Aldridge v. Combined Insurance Company of America, et al.*, Case No. CV-95-93, now pending in the Circuit Court of Marengo County, Alabama. Upon consideration of the motion and pertinent portions of the record, the court first concludes and it is therefore ORDERED that defendants' motion is due to be and is hereby GRANTED to the extent it seek to ADD Elizabeth Aldridge to this action as a cross-defendants. *See e.g.*, Fed.R.Civ.P..21;; *Haywood v. Clay*, 456 F.Supp. 1156, 1161 (D S..C. 1977); *Aero Corp. v. Department of the Navy*, 493 F.Supp. 558, 569 (D. D.C. 1981).

With respect to that portion of defendants' motion which seeks to enjoin Aldridge's state court action, it is ORDERED that the motion be and is hereby SET FOR A HEARING at 8:30 a.m. on Wedneday, October 30, 1996, at the United States Courthouse in SELMA, ALABAMA,

at which the defendants shall SHOW CAUSE why their motion ought to be granted and, in the event defendants' bear their burden, Elizabeth Aldridge shall SHOW CAUSE why she ought not to be enjoined from pursuing her claims for punitive damages against the defendants.

DONE this 21st day of October, 1996.

/s/ W. B. Hand
Senior District Judge

[Filed Aug. 19, 1996]

IN THE UNITED STATES DSTRICT COURT
FOR THE SOUHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

Civil Action No. 95-0809-BH-M

SARAH P. STEANS,

Plaintiff,

v.

COMBINED INSURANCE COMPANY OF AMERICA, *et al.*,

Defendants.

ORDER

On August 19, 1996, a hearing was held before the Court on defendants' motion to enter an order limiting punitive damages. The parties were represented by their attorneys of record. The Court received evidence and heard arguments of counsel relative to the settlement of this cae, and other cases, and the imposition of punitive damages againt Defendant Combined Insurance Company of America ("Combined").

Combined has informed the Court that this case has been settled along with 12 other cases in Mobile County and elsewhere in which the Plaintiffs or claimants are represented by the law firm of Corey, Watson, Crowder & Petway, P.C. and Jarrett Crawford (Plaintiffs Attorneys).. Combined has also settled claims or disputes in Alabama involving approximately 50 other Plaintiffs or claimants not represented by Plaintiffs Attorneys. The suits and claims by these 50 Plaintiffs were filed against Combined and 23 of its agents in Barbour County, Pike County, Mobile County, Marengo County, Dallas County, Mar-

shall County, Coosa County, Hale County, Butler County, Bibb County, Monroe County, Bullock County, and Lawrence County, Alabama. The total agreed to be paid in the settlements of the 50 plaintiffs is approximately $7.5 million. Combined has now agreed to settle 13 more plaintiff/claimants claims, including 2 cases pending before this Court, for $775,000.

Combined has moved this Court for an order that the imposition of additional punitive damages against Combined in the future for same or similar alleged misconduct is prohibited by the United States Constitution and under the Alabama Law.

In the 63 cases and claims settled by Combined, the Plaintiffs allege that agents of Combined, acting within the course and scope of their employment, engaged in misconduct in the sale, renewal and servicing of policies issued by Combined (the Misconduct). The alleged Misconduct include:

1. Intentionally making misrepresentations or engaging in a pattern and practice of making misrepresentations to policyholders, including, but not limited to, misrepresenting benefits payable under various insurance policies issued by Combined, misrepresenting policy coverages, misrepresenting amounts payable under various policies, misrepresenting issues as to Medicaid or Medicare, misrepresenting the effect of the age of the policyholders on benefits available, misrepresenting the time during which benefits are payable, and misrepresenting the type of treatment, medical or otherwise, covered by the policies;

2. Fraudulently suppressing from policyholders or engaging in a pattern and practice of fraudulently suppressing from policyholders material and important information regarding policies, including, but not limited to, suppressing what benefits are or are not payable under various insurance policies issued by Combined, suppressing what is or

is not covered by various insurance policies, suppressing what amounts are payable and what amounts are not payable under various policies, suppressing facts material to issues as to Medicare or Medicaid, suppressing whether the age of policyholders does or does not impact available benefits, suppressing the time during which benefits are payable or not payable, suppressing the type of treatment, medical or otherwise, which is or is not covered by the policies;

3. Negligent or wanton hiring, training, and supervision of agents;

4. Converting policy holder funds; and

5. Violating Alabama State law in the sale of policies or the servicing of claims.

Combined specifically denies the allegations of each Plaintiff or potential Plaintiff.

This Court has been guided in its consideration of this matter by decisions of the United States Supreme Court, including *BMW North American Inc. v. Gore*, 64 U.S. LW 4335, 116 S. Ct. 1589 (1996) and those cited by Combined in its brief in support of this motion. The court has also considered the factors outlined in *Green Oil Co. vs. Hornsby*, 539 So.2d 218 (Ala. 1989), *Hammond vs. City of Gadsden*, 493 So..2d 1374 (Ala. 1986), and the factors set for in *Code of Ala.* 1975 § 6-11-23. The Court has also considered the findings of Judge William Robertson in his order dated March 5, 1996 entered in the *Russaw v. Combined*, CV - 95-019, in the Circuit Court of Barbour County.

FINDINGS

For the purposes of this motion hearing the Court will presume that the Plaintiffs could prove all of the Misconduct and the allegations contained in their complaints.

1. The Court finds that the sums paid in settlement of the cases are almost exclusively in settlement of punitive damage claims, as the compensatory damage sustained by any one Plaintiff would not likely exceed $1,000.00, and in many cases the actual compensatory loss suffered by the Plaintiff is less than $500.00.

2. The Court finds that Combined makes reasonable and appropriate efforts to insure that the agents it hires are honest and capable, which include background checks by outside sources, interviewing and testing. The court further finds that Combined reasonably and appropriately trains its agents by sending them to a two week training school, one week of supervied field training and one week license school, and field training with sales managers and district managers. The Court finds that Combined attempts to continually train its agents through the use of weekly meetings and periodic seminar type meetings. In addition, the Court finds that Combined effectively provides training to any agents who are promoted to managerial positions. The Court further finds that Combined supervises its agents through monitoring by sales managers, district managers, sub-regional managers, and regional managers.

3. The Court finds that Combined has made certain changes in its method of operation in 1995 and 1996, including: (1) the employment of a full-time quality assurance manager who has the duty of investigating all policyholder complaints, and attempting to settle complaints to the satisfaction of the policyholder where such settlements are warranted based on investigation; (2) the policy wording has been altered to try to alleviate any misunderstanding that can be avoided and the accident policies now have large red print, displayed on the front part of the policy, which: THIS IS AN ACCIDENT ONLY POLICY AND DOES NOT PAY BENEFITS FOR LOSS FROM SICKNESS; (3) policy working has been altered and the sickness policies now have a red

print displayed on the front of the policy, which says: THIS A SICKNESS ONLY POLICY AND DOES NOT PAY-BENEFITS FOR LOSS FROM ACCIDENT; (4) the new applications for accident policies require policyholders to sign a statement which says in red print: I understand that the policy is an accident only policy and does not pay benefits for loss from sickness. I also understand that no agent can change the terms or increase any of the benefits in the policy. (5) the new applications for a sickness requires policyholders to sign a statement which says: I understand that the policy is a sickness only policy and does not pay benefits for loss from accident. I also understand that no agent can change the terms or increase any benefits in the policy.; (6) all claims ôn policies for Alabama are specifically reviewed to insure that proper benefits are being paid; (7) Combined has made a decision to sell and renew its policies by mail rather than through field agents in the state of Alabama.

4. Combined has settled litigation or threatened litigation with approximately 63 plaintiffs/claimants for a total of approximately $8.25 million. The aggregate amount of the settlements agreed to be paid is four-and-a-half times Combineds entire statutory profits earned during the whole of the ten year period between 1985 and 1994 in the State of Alabama. The alleged out of pocket loss actually incurred by the plaintiffs in less than fifty thousand dollars. The ratio of puntive damages to compensatory damages paid in these settlements is more than 125 to 1.

5. The payment by Combined of the amounts it has either paid or agreed to pay is sufficient to punish Combined for the alleged Misconduct and to deter Combined and others from similar Misconduct in the future.

6. The cumulative amount which Combined has paid or agreed to pay is adequate, when coupled with other payments made and expenses incurred, to fully punish

and deter Combined and all of its current and former agents with respect to any and all of Combineds, or its agents, Misconduct which has occurred up to and including the date of this Order. The imposition of additional punitive damages against Combined for such alleged Misconduct would constitute duplicative, multiple, unjust and grossly excessive punitive awards.

It is, therefore, ORDERED, ADJUDGED and DECREED that no additional punitive damages may be assessed in Alabama against Combined or any of its past or present agents for any allegations of the same or similar Misconduct which occurred on or before the date of this Order. This Court will retain jurisdiction of this case for purposes of enforcing this Order and the settlement of this case. In making these findings and this Order, this Court has considered allegations of 63 Plaintiff/claimants who reside throughout the state of Alabama, and evidence relating to Combineds operation in the entire state of Alabama.

It is also ORDERED, by virtue of the settlement reached by the parties in this action, that this case be DISMISSED from the active docket of the Court, with prejudice, PROVIDED that either party may reinstate the case within thirty (30) days from the date of the entry of this order if the settlement agreement is not consummated. No other order shall be forthcoming from the Court except upon application by either party for final judgment as prescribed by Rule 58 of the Federal Rules of Civil Procedure. Each party shall bear their own costs unless otherwise agreed upon by the parties.

DONE this 19th day of August, 1996.

/s/ W. B. Hand
Senior District Judge

UNITED STATES CODE ANNOTATED
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART V—PROCEDURE
CHAPTER 111—GENERAL PROVISIONS

§ 1651 Writs

(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.

(b) An alternative writ or rule nisi may be issued by a justice or judge of a court which has jurisdiction.

UNITED STATES CODE ANNOTATED
TITLE 28. JUDICIARY AND JUDICIAL PROCEDURE
PART VI—PARTICULAR PROCEEDINGS
CHAPTER 155—INJUNCTIONS; THREE-JUDGE COURTS

§ 2283. Stay of State court proceedings

A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where nececessary in aid of its jurisdiction, or to protect or effectuate its judgments.